

TREASURY - GENERAL

STATE INVESTMENT COUNCIL

Common and Preferred Stocks and Issues Convertible into Common Stock of International Corporations and Global, Regional or Country Funds in Emerging Markets

Proposed Amendments: N.J.A.C. 17:16-46

Proposed Repeal: N.J.A.C. 17:16- 46.1

Authorized By: State Investment Council, William G. Clark, Director,
Division of Investment

Authority: N.J.S.A. 52:18A-91

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2006-89

Submit comments by May 19, 2006 to:

William G. Clark
Administrative Practice Officer
Division of Investment
P.O. Box 290
Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

The proposed amendments and repeal to N.J.A.C. 17:16-46 are intended to expand the range of emerging market corporate securities in which eligible funds may be invested pursuant to this subchapter. The proposed amendments also make certain non-substantive changes designed to make the subchapter more understandable and consistent with analogous subchapters.

To be consistent with amendments to N.J.A.C. 17:16-44 being proposed elsewhere in this issue of the New Jersey Register, the Council is proposing to amend the definition of “emerging markets” in N.J.A.C. 17:16-46.1 (relocated to N.J.A.C. 17:16-

46.1(d)) to include countries that are not included in the Morgan Stanley Capital International (MSCI) Equity Index Series for developed markets.

As proposed, the Director would be able to invest pursuant to N.J.A.C. 17:16-46 in the stock of companies incorporated, headquartered or primarily doing business in emerging markets, as well as publicly-traded global, regional or country funds that invest in emerging markets. The amendments would eliminate the minimum capitalization requirement for emerging markets companies currently found in N.J.A.C. 17:16-46.2(a), and would decrease the minimum capitalization requirement for emerging markets funds currently found in N.J.A.C. 17:16-46.2(b) from \$100 million to \$50 million. Consistent with analogous subchapters, the minimum capitalization requirement would apply only at the time of purchase.

The Council is also proposing to eliminate the requirement in N.J.A.C. 17:16-46.2(d)4 that would require prior approval by the Council of any purchase in a new public offering that exceeds 0.1 percent of the assets of Common Pension Fund D.

The Council is proposing to raise the maximum exposure of investments in individual emerging markets corporate securities set forth in N.J.A.C. 17:16-46.4 (recodified as N.J.A.C. 17:16-46.3). Specifically, up to 10 percent (up from five percent) of the market value of emerging markets stocks in Common Pension Fund D may be invested in the stock of any one emerging markets corporation, and the Director may purchase up to 10 percent (up from five percent) of the total amount of stock of any one corporation.

The Council is proposing to replace the overall five percent limit of emerging markets investments by Common Pension Fund D currently in N.J.A.C. 17:16-46.4(a)4 to a more flexible limit, calculated in relation to the proportion of the market capitalization of emerging stock companies in the MSCI Emerging Markets Index to the overall capitalization of companies in the MSCI All-Country World Ex-United States Index or any similar index selected by the Director and approved by the Council.

The Council is proposing to add new N.J.A.C. 17:16-46.3(a)5 and 6 to reference the overall equity limitations set forth in N.J.A.C. 17:16-41 and 44 and the overall limitation on international holdings set forth in N.J.A.C. 17:16-44 and 67.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

There will be no social impact from the proposed amendments and repeal.

Economic Impact

There will be a positive impact from the proposed amendments and repeal on participants in those funds eligible to invest in emerging market corporations and funds. The amendments expand the scope and level of emerging market investments in which the Director can invest, while at the same time maintaining limitations to limit the overall risk assumed by Common Pension Fund D.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendments and repeal.

Agriculture Industry Impact

The proposed amendments and repeal will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments and repeal impose no requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Smart Growth Impact

The proposed amendments and repeal are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 46. COMMON AND PREFERRED STOCKS AND ISSUES
CONVERTIBLE INTO COMMON STOCK OF
INTERNATIONAL CORPORATIONS [IN EMERGING
MARKETS] AND GLOBAL, REGIONAL OR COUNTRY
FUNDS **IN EMERGING MARKETS**

[17:16-46.1 Definition of emerging markets

As used in this subchapter, “emerging markets” are defined as countries which are not eligible for investment under N.J.A.C. 17:16-20.]

17:16-[46.2] **46.1** Permissible investments

(a) Subject to the limitations contained in this [subchapter, permissible investments Include stock] **subchapter the Director may invest and reinvest the moneys of any eligible fund in:**

1. Stock [, or securities convertible into stock,] of companies **incorporated, headquartered or primarily doing business** in emerging markets[:]; **and**

[1. Which have at least \$US 1 billion of market capitalization; or

2. Which have depository receipts that are traded on the New York or American Stock Exchanges, or the over-the-counter markets.]

[(b)] **2.** [Subject to the limitations contained in this subchapter, permissible investments shall also include global] **Global**, regional or country funds which invest in emerging [countries] **markets** and which are traded on the New York or American Stock Exchanges, or the over-the-counter markets, and which have a minimum market capitalization of \$US [100] **50** million. **Subsequent to purchase, if capitalization falls below \$US 50 million, the investment does not have to be sold.**

[(c)] **(b)** Notwithstanding the restrictions contained in [this subchapter] **(a) above,** the Council may approve the purchase of common **and preferred** stocks **and issues**

convertible into common stock of international corporations or global, regional or country funds in emerging markets on a case-by-case basis.

[(d)] **(c)** Notwithstanding the restrictions contained in (a) [through (c)] above, the Director may:

1. - 3. (No change.)

4. Purchase [up to 0.1 percent of Common Pension Fund D's assets] stock in new public offerings of companies in emerging markets without prior approval of the [State Investment] Council provided, however, approval will be sought at the next regularly scheduled Council meeting in the event the investment does not subsequently meet the requirements of this subchapter. If approval is not granted, the securities shall be sold within three months of the Council's disapproval; and

(No change.)

(d) For purposes of this subchapter, "emerging markets" shall mean countries that are not included in the Morgan Stanley Capital International (MSCI) Equity Index Series for developed markets or another similar index selected by the Director and approved by the Council.

17:16-[46.3] **46.2** [Applicable] **Eligible** funds

[(a)] Permissible investment is limited to Common Pension Fund D for the following pension funds:

1. Police and Firemen's Retirement System;
2. Public Employees' Retirement System;
3. State Police Retirement System;
4. Teachers' Pension and Annuity Fund; and
5. Judicial Retirement System of New Jersey.]

For purposes of this subchapter, eligible funds shall include Common Pension Fund D.

17:16-[46.4] **46.3** Limitations

(a) At time of initial purchase, the following conditions shall be met:

1. Not more than [five] **10** percent of the market value of the emerging markets stocks in Common Pension Fund D shall be invested in the common and preferred stock of any one corporation;
2. The total amount of stock purchased or acquired under this subchapter of any one corporation shall not exceed [five] **10** percent of the common stock, or of any other class of stock, of such corporation;
3. The total amount of shares or interests in any one **emerging market** global, regional or country fund shall not exceed 10 percent of the total shares or interests of such fund; [and]
4. The total market value of stock, or securities convertible into stock, of companies in emerging markets[and], the shares or interests in global, regional or country funds **in emerging markets, and international government and agency obligations in emerging markets permitted under N.J.A.C. 17:16-20, held by Common Pension Fund D** shall not exceed [five percent] **1.5 times the percentage derived by dividing the total market capitalization of companies included in the MSCI Emerging Market Index by the total market capitalization of the companies included in the MSCI All-Country World Ex-United States Index** of the total market value of the assets held by Common Pension Fund D. **In calculating the above percentage, the Director may substitute such other similar indices as may be selected by the Director and approved by the Council;**
5. **The combined market value of common and preferred stock and issues convertible into common stock, both domestic, as permitted in N.J.A.C. 17:16-41, and international, as permitted in this subchapter and in N.J.A.C. 17:16-44, held by an eligible fund (other than Common Pension Fund D), directly or through Common Pension Funds A and D, cannot exceed 70 percent of the market value of the assets of the fund, subject to such further provisos as are contained in N.J.A.C. 17:16-67. When the combined market value of the common and preferred stock and issues convertible into common stock held by a fund, directly or through Common Pension Funds A and D, reaches or exceeds 68 percent of the market value of the assets of the fund as of the end of a period used for evaluating unit values of participation, then the Council shall be notified at the next regularly scheduled meeting of the Council. When the combined market value of the common and preferred stock and issues convertible into common stock held by the fund, directly or through Common Pension Funds A and D, exceeds 70 percent of the market value of the assets of the fund, then the Division may have a six-month period of grace to reduce the level of participation of the fund below the 70 percent level, except that the**

period of grace may be extended for additional four month periods with the approval of the Council; and

6. The market value of international common and preferred stock and issues convertible into common stock held by an eligible fund (other than Common Pension Fund D), either directly or through Common Pension Fund D, when combined with the market value of international government and agency obligations permitted under N.J.A.C. 17:16-20 and Canadian obligations permitted under N.J.A.C. 17:16-16, cannot exceed 22 percent of the market value of the assets of such fund, subject to such further provisos as are contained in N.J.A.C. 17:16-67.

(b) If, subsequent to initial purchase, the [market value of the common and preferred stock of any one corporation exceeds five percent of the total market value of the emerging markets stocks in Common Pension Fund D, or the total market value of stock, or securities convertible into stock, of companies in emerging markets and the shares or interests in global, regional or country funds exceeds five percent of the total market value of the assets held by Common Pension Fund D] limitations in (a) above are exceeded, then the Council shall be notified at [a] the next regularly scheduled meeting of the Council. The Division may be granted a six-month period of grace to reduce the level of participation of the fund below the [five percent] maximum levels, except that the period of grace may be extended for additional four-month periods with the approval of the Council.